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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA IN AND FOR THE COUNTY OF MOHAVE

STATE OF ARIZONA,

Plaintiff.

VS.

No. CR-2005-0845

RESPONSE TO MOTION IN LIMINE (FLDS HISTORY, **CULTURE AND PRACTICES)**

DAVID ROMAINE BATEMAN,

Defendant.

COMES NOW, the State of Arizona, by the Mohave County Attorney, Matthew J. Smith, and hereby moves this Court to deny Defendant's Motion in Limine concerning expert and other evidence the defense wishes to provide to the jury concerning the FLDS History, Culture and Practices. The operative Rules of Evidence are found in Rules 402 and 403 of the Arizona Rules of Evidence. Basically anything sought to be admitted into evidence must tend to prove the existence of a material fact that is at issue in a case, whether it is part of a cause of action, element of an offense, or a defense. The problem with Defendant's motion is that none of this evidence submitted helps prove any material fact at issue. Jury nullification, although often practiced by defense counsel in this country, is not a valid defense under Arizona law. The only applicable defense in these cases is that either the Defendant did not have sexual intercourse with the victim in Mohave County during the relevant time frames, or that he was legally married to the victim who is under 18 years of age. Assuming the rest of the Defendant's constitutional

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challenges to A.R.S. §§ 13-1405 and 13-13-1407 fail, then none of the history, culture or practices of the FLDS church have any relevance in this case.

The State disagrees with the defense statement that the purpose of plural marriage is not sexual gratification, but promotion of family and procreation. The State believes it has evidence to back it up that one of the main reasons for the underage sexual practices of the FLDS church in Mohave County is the sexual gratification of its male members. The fact the defense states the purpose is not sexual gratification is just the opinion of the writer of the motion. Nonetheless the State maintains that none of the FLDS beliefs, religion, culture or practices is a proper legal defense to the charges in these cases. The Defendant is not charged with polygamy, but charged with Sexual Conduct With a Minor under A.R.S. § 13-1405. In order to find the Defendant guilty of this offense, the jury must find beyond a reasonable doubt that the Defendant intentionally or knowingly engaged in sexual intercourse with a child under 18 years of age. The fact the Defendant maintains that the rationale or reason for their criminal behavior was motivated and pursued out of sincere religious belief is simply not a defense under applicable Arizona law. See A.R.S. § 13-402 et seq. Religious belief or motivation simply does not constitute a defense to the charges in these cases. To allow otherwise would allow any church or faith or religion the ability to circumvent the laws passed by the people of the state of Arizona by simply stating that these laws violate the religious beliefs or faiths of a particular people, or that it is okay to violate the laws of the state of Arizona if one is merely following a religious-held belief or practice. Under Defendant's logic if the FLDS church believed that it was okay to have religious sealing ceremonies and sexual relations with ten year old girls, there would be nothing in the A.R.S. § 13-1405 and A.R.S. § 13-604.01 that would prohibit such practice.

The fact that there may have been religious sealing ceremonies performed by Warren

Jeffs or someone else associated with the church does not change the fact the Defendant in this

particularly charged case was not legally married to the victim and therefore under Arizona law

could not practice sexual relations with the victim. In fact, since the marriage was not legally

performed or recorded, this fact clearly shows that the Defendant and whoever performed any

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religious sealing ceremony knew that this marriage was not legally recognized and therefore had no legal effect. In a country where the separation of church and state has become paramount among many political issues, the State maintains it is improper to use religion as a shield in this case. The State requests the Court deny Defendant's Motion and prohibit any evidence of the FLDS history, culture and practices regarding religious sealing ceremonies and prohibit the defense from mentioning these ceremonies at the trial of this case.

RESPECTFULLY SUBMITTED THIS 5TH DAY OF JANUARY, 2006.

COUNTY ATTORNEY

MATTHEW J. SMITH

A copy of the foregoing sent this same day to:

Judge Chang Dir 4

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